Testimony Assembly Bill 622 January 24, 2008

Current law allows litigants, in general, to change attorneys, to request a change of venue, (court location) and in family cases, to request a change of guardians ad litem or other court-appointed specialists dealing with child-centered issues. Given the fact that many judges are no less biased than any other family court experts, parents who feel the judge in their case has been apathetic or prejudiced against them should have every right to try and improve their status under a different judge after a divorce settlement.

Those judges who routinely dismiss domestic violence charges brought by a man against his wife or girlfriend are a prime example. No such complaint pressed by a woman would ever be dismissed in court. Those judges who use extreme threats to enforce child support orders on unemployed fathers are another example. Such strong legal measures as a possible jail sentence are rarely used to force a mother to pay up when she's delinquent on her share of child support obligations, especially not when she has more children by a new partner. Those judges who continue to award preferential child placement to divorced mothers and seldom enforce the father's placement schedule when the mother deliberately violates his rights are another example. Such abusive behavior is virtually never tolerated from a father who illegally withholds his children from the mother.

In family court, as in any other, judges are subject to bias, apathy and mistakes in their administration of the law. In our perceptions and our expectations of them, we hope they'll perform to the highest standards of the law. In reality, however, we know that many of them are far from being fair and objective. They should be subject to recall, recusal or replacement, just like the rest of us, when we fail to serve the standards expected of us.

Assembly Bill 622 is a good proposal that would provide one more option to parents, particularly fathers, in high-conflict divorces who have very strong feelings about their settlements to redress their issues before a different judge, with the hope of improving their situation afterward. This reform deserves to be entered into the lawbooks.

Respectfully submitted,

Joseph Vaughn

Joseph C. Vaughn
800 Elm Dr. #318
Edgerton, WI. 53534

STATE OF WISCONSIN, CIRCUIT COURT, _____ COUNTY | *For Official Use*

Petitioner: _____
Address: _____
_____

-VS-

Respondent: _____
Address: _____
_____

Petition to Enforce Physical Placement Order

Case No. _____

Respondent's	Date of Birth	Sex	Race	Height	Weight	Hair color	Eye color

Based upon the following:

1a. I was awarded periods of physical placement of (name of child/ren) _____ _____ by judgment or order of the Circuit Court or Family Court Commissioner of _____ County. A copy of the placement provisions is attached.

1b. The original order or judgment ☐ set ☐ did not set specific times for physical placement.

2. I have: *(Mark any of the boxes that apply.)*
   - ☐ had one or more periods of physical placement denied by the respondent.
   - ☐ had one or more periods of physical placement substantially interfered with by the respondent.
   - ☐ incurred a financial loss or expenses as a result of the respondent's intentional failure to exercise periods of physical placement, without adequate notice, under an order allocating specific times for the exercise of placement.

I REQUEST THAT THE COURT ISSUE AN ORDER: *(Mark any of the following boxes that apply.)*

- ☒ 1. Granting additional periods of physical placement to replace those denied or interfered with.
- ☒ 2. Awarding reasonable costs and attorney fees.
- ☐ 3. Specifying the times for the exercise of periods of physical placement.
- ☐ 4. Finding the respondent in contempt.
- ☐ 5. Granting an injunction ordering the respondent to strictly comply with the judgment or order.
- ☐ 6. Requiring the respondent to pay me a sum of money sufficient to compensate for financial loss or expenses resulting from the respondent's intentional and unreasonable failure to exercise periods of placement under an order allocating specific times.

Subscribed and sworn to before me
on _____ _____
Signature of Petitioner

_____ _____
Notary Public, State of Wisconsin Date

My commission expires: _____

Distribution: 1. Court – Original; 2. Petitioner; 3. Respondent

Supreme Court of Wisconsin

DIRECTOR OF STATE COURTS
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Shirley S. Abrahamson
Chief Justice

16 East State Capitol
Telephone 608-266-6828
Fax 608-267-0980

A. John Voelker
Director of State Courts

January 24, 2008

The Honorable Carol Owens
Chair, Assembly Committee on Children and Family Law
Room 315 North, State Capitol
Madison, WI 53702

RE: Assembly Bill 622, Providing for Substitution of Judges in Divorce Actions

Dear Representative Owens:

I regret that I will be unable to personally testify before your committee today, but I ask that you accept this written testimony, submitted on behalf of the Legislative Committee of the Judicial Conference. The Judicial Conference is made up of all the judges in Wisconsin.

The Legislative Committee opposes Assembly Bill 622 because it is an unnecessary change of longstanding Wisconsin practice and is not an efficient allocation of judicial resources.

It is important to remember that parties to a family law action, as do parties in all civil cases, have a right to judicial substitution under s. 801.58, Wis. Stats. There are time limits on the request for judicial substitution, so that a substitution can be made before significant proceedings are held in a case. This prevents wasting the parties' time and resources and also the court's time and resources. It also prevents parties from requesting substitutions based on rulings already made by a judge.

In a series of divorce cases decided between 1874 and 1977, known as the "Bacon-Bahr" line of cases, the Supreme Court has interpreted s. 801.58, and its predecessor substitution statutes, as being inapplicable to certain proceedings to modify divorce judgments.[1] This is how the Supreme Court described the reasons behind this decision in a 1989 case:

> In reaching this conclusion, the court has identified two public policy reasons for interpreting sec. 801.58 as being inapplicable to proceedings to modify divorce judgments: (1) The trial judge has become familiar with the parties and the circumstances of the case and is, by reason of this experience, best prepared to hear further proceedings in the case; (2) denial of substitution facilitates efficient allocation of judicial resources. *State ex rel. Tarney v. McCormack*, 99 Wis.2d 220, 233, 298 N.W.2d 552 (1980).[2]

We believe this reasoning continues to be sound. Judges who have already presided over divorce proceedings can more efficiently handle post-divorce proceedings. There will not be a need to re-litigate issues that have already been heard. Frequent requests for substitution make it more difficult to efficiently use our limited judicial resources, particularly in small or one-judge counties.

Therefore, we urge your committee to not recommend passage of AB 622.

I hope these comments will assist your committee in its deliberations. If you have questions, please do not hesitate to contact me or our Legislative Liaison, Nancy Rottier. Thank you.

Respectfully submitted,

A. John Voelker
Director of State Courts

AJV:NMR
cc: Members, Assembly Committee on Children and Family Law

---

[1] See *Bacon v. Bacon*, 34 Wis. 594 (1874); *Hopkins v. Hopkins*, 40 Wis. 462 (1876); *Sang v. Sang*, 240 Wis. 288, 3 N.W.2d 340 (1942); *Luedtke v. Luedtke*, 29 Wis.2d 567, 139 N.W.2d 553 (1966); *Bahr v. Galonski*, 80 Wis.2d 72, 257 N.W.2d 869 (1977).

[2] *Parrish v. Kenosha County Circuit Court*, 148 Wis.2d 700, 703, 436 N.W.2d 608 (1989)